

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1467 of 1984

with

CROSS OBJECTIONS FILED BY RESPONDENTS 1 TO 4

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
  4. Whether this case involves a substantial question No :  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? No :

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ORIENTAL INSURANCE CO.LTD.

Versus

RAJIBEN WD/O.SENDHABHAI

LAVJIBHAI CHAUDHARY

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Appearance:

MR RAJNI H MEHTA for Petitioner

MR VC DESAI for Respondent No. 1

NOTICE SERVED for Respondent No. 5

MR AV TRIVEDI for Respondent No. 6

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision: 15/02/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava, J.)

1. The facts giving rise to this Appeal and cross objections can briefly be narrated as under :

One Rajiben, widow of Sendhabhai Lavjibhai Chaudhari filed Motor Accident Claim Petition Nos.106 of 1980 claiming compensation for death of her husband Sendhabhai. The deceased hired Metador No.GTF 4051 for going to Ahmedabad for purchasing one electric motor from Ahmedabad which was to be installed in the well situated in the field of the deceased. The accident took place on 9.10.1979 when Sendhabhai was returning from Ahmedabad along with electric motor on the hired metador at about 6.30 a.m. The deceased was sitting along with the driver in the driver's cabin of the Metador. The owner of the Metador was also in the said vehicle. Amrutpuri Hirapuri Goswami was driving the Metador. The two camel carts were proceeding on National High-way from Baliasan towards Mehsana. It was alleged that the driver was driving the vehicle rashly and negligently and dashed with the said camel cart as a result of which the accident took place. The camel of both the carts also sustained injuries and the Metador was damaged. The claim petition No.106 of 1980 was confined to compensation for fatal injuries to Sendhabhai who expired on account of the injuries sustained in the accident.

2. The petition was contested by the owners and the respondents. The cross objection was filed against the Award of the tribunal claiming more compensation. However, Shri V.C.Desai, learned Counsel for the respondents No.1 to 4, who filed the cross objections, stated that he may be permitted to withdraw the cross objections. Accordingly the cross objections are dismissed as withdrawn.

3. After considering the respective pleadings of the parties and the evidence adduced by them, the Tribunal awarded Rs.1,47,500/- as compensation together with interest at the rate of 6 per cent from the date of application till realisation with proportionate costs.

4. The present Appeal has been filed by the Oriental Insurance Co. Ltd. with which the Metador in question was insured.

5. Shri Mehta, learned Counsel for the appellant raised only one contention that the award of the Tribunal

against the Insurance Company cannot be sustained in terms of the insurance policy and also in view of latest pronouncement of the Apex court in Smt. Mallawwa & ors. v/s. Oriental Insurance Co. Ltd. & ors., reported in JT 1998 (8) SC 217. Shri V.C.Desai, learned Counsel for the respondents No.2 to 4 argues that in view of conditions of permit under which the Metador was plying the owner of the goods was permitted to sit in the vehicle and travel in the same and as such the Insurance company is liable to pay compensation.

6. Certain facts are not in dispute. It is not in dispute that the Metador in question was a public carrier and goods vehicle. It was not a vehicle meant for carriage of passengers for hire or reward. The date, time and place of accident and also the manner of accident is not in dispute. The findings of the Tribunal that the driver of the metador was rash and negligent is also not in dispute before us. It is also not in dispute that the husband of the claimant died in fatal accident. The only point in controversy is whether the Insurance Company is liable to pay compensation on the facts and circumstances of the case or not.

7. In Mallawwa's case (supra) the Apex Court has laid down the test to determine whether a passenger was carried for hire or reward or not. It has laid down that the correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward. It would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions at that vehicle for carrying passengers for hire or reward. Section 95 of the Motor Vehicles Act, as amended, was considered by the Apex Court in this case and it was observed that it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions at that vehicle for carrying passengers for hire or reward. It is also clear from this pronouncement of the Apex Court that the position does not stand altered in case along with the goods either owner or caretaker travels in a goods vehicle. Consequently from this verdict it is clear that if the vehicle was to be used as goods vehicle the passengers travelling in it cannot claim compensation from the Insurance Company on account of injuries sustained nor their legal representatives can claim compensation in case the injured expired after sustaining injuries in the fatal

accident.

8. Shri V.C.Desai, learned Counsel for the respondents No.2 to 4 contended that in this case the Apex Court did not consider the terms and conditions of the permit under which the vehicle was plied under the authority of the transport authority. He has brought to our notice the extract of permit issued by the Transport Authority and also printed condition appended along with the said extract and argued that condition No.12 which provides that number of persons when carried shall not exceed as provided in Rule 11F of the Bombay Motor Vehicles Rules 1959 empowering carriage of owner of the goods in such vehicle. We have examined the record. The original permit is not on record nor it was filed. Paper No.158 is extract of permit from which it cannot be said that carriage of passenger was also permitted. Even though the effect of permit was not considered by the Apex Court in Smt. Mallawwa's case (supra) we have to look to the Insurance Policy and the insurance policy has to be read along with conditions in the permit. As stated earlier since the original permit has not been produced either before the Tribunal or before us as additional evidence it cannot be said as to what was the exact condition in the original permit. Appended conditions cannot be said to be sacroscent, more particularly when there is specific limitation as to use of goods vehicle in the insurance policy. One of the limitations as to the use of this vehicle in the Insurance policy is use for conveyance of passengers for hire or reward. Thus, even if the Metador was hired by the deceased he was not authorised within the terms of the insurance policy to travel in the metador from destination to Ahmedabad for carriage of electric motor from Ahmedabad to its destination. If the owner of the goods, namely, the electric motor acted in violation of this condition, naturally it will be deemed to be use of the vehicle in breach of one of the terms and conditions of the Insurance Policy and as such the Insurance Company cannot be said to be liable to pay any compensation.

9. The permit is issued by the Transport Authority. In the Insurance policy there is provision that the goods vehicle is to be used only under public carrier's permit within the meaning of the Motor Vehicles Act, 1939. This does not mean that whatever condition is incorporated or annexed with the permit the insurance company is bound by those terms and conditions. If there was specific prohibition for use of the vehicle for conveyance of passenger for hire or reward the liability of the insurance company to pay compensation cannot be accepted.

10. Thus, in our view, for the reasons stated above the Tribunal was in error in fastening the liability to pay compensation on the Insurance Company. The Appeal, therefore, succeeds and is allowed. The Award of the Tribunal against the Insurance Company is set aside. The Award against the owner shall, however, remain intact. No order as to costs.

sd/-

( D. C. Srivastava, J. )

Date : February 15, 2000 sd/-

( H. K. Rathod, J. )

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